IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 755 OF 1992

ALONG WITH

CROSS OBJECTION STAMP NO. 14517 OF 1993.

Union of India ..Appellants

versus

Sanjay Trading Company ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. R. M. Haridas i/b. P. N. Joshi for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST APRIL,2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. This appeal is filed by the Union of India and the cross objection is filed by the respondents - applicants. The Respondents - applicants was a dealer in onions. He signed two consignments of 451 bags each from Nashik Road to Shalimar via Nagpur. According to the respondents - applicants the normal period of transit is 7 to 8 days but in this case it reached after 23 days and 20 days respectively of

the booking, as a result the consignments were damaged. The respondents - applicants suffered loss and therefore they had filed claim application before the Railway Claims Tribunal, Mumbai vide Application No. 1260 of 1990. The claim of the respondents - applicants was about Rs.46,000/- for two consignments. The Tribunal however awarded Rs.12,011.25 paise with interest at the rate of 12% per annum.

3. So far as Appeal by the Union of India is concerned, Mr. Samant contended that the Tribunal went wrong in passing decree against both Central and South Eastern Railways when Central Railway was already a party and therefore decree could not be against both the Railways. This view has been upheld by me in many earlier cases. Counsel for the respondents - applicants did not raise objection and therefore the decree against South Eastern Railway is required to be set aside.

4. Mr. Samant also contended that award of interest at the rate of 12% per annum is not proper and it should be reduced to 9%. This submission has also been accepted by me earlier in many cases. Therefore the interest rate is required to be reduced to 9%.

5. So far as cross objection is concerned, counsel for the respondents - applicants contended that in all 902 bags i.e. 451 bags each under two consignments were despatched from Nashik Road to Shalimar via Nagpur and what Tribunal has done is reflected in consideration of issue No.5 as under :

> **"Admittedly, at the time of delivery, onions were found badly damaged. Accordingly to the Applicants, the damage was caused because of the inordinate delay in transit and mishandling of the goods while in transit. Exhibits 3 and 10, the Joint Survey Reports concerning the two consignments, show that the contents found partly rotten, discoloured, softened and emitting bad smell. The quantity assessed under exhibit 3 were 240 bags and under exhibit 10 were 185 bags. Damaged quantity assessed under exhibit 3 is 110 bags (i.e. 50 per cent damage in 140 bags and 40 per cent damage in 100 bags) and under exhibit 10 is 73.25 bags (i.e. 45 per cent damage in 85 bags and 35 per cent in 100 bags). Accordingly, we find that only 110 bags out of 451 bags under R. R. No. 71917 and only 73.25 bags out of 451 bags under R.R. No. 719189 reached destination in bad**

condition."

Counsel for the respondents - applicants contended that it is true that reasoning given by the Tribunal is based on the joint survey report. However, he stated that if in a bag of 50 kgs. damage is found to 50% i.e. 25 kgs. of onion, it cannot be said that remaining 25 kgs. would be without any damage whatsoever. All the onions were packed in bags and sealed tightly, and the delay is bound to affect some part of the rest of the onions. Therefore, according to him in case of 50% damage it was not proper to consider that only half of the onion i.e. 25 kgs. from out of 50 kg. would be damaged and nature of the damage is as per the above paragraph is that the onions were rotton, discoloured, softened and emitting bad smell. Therefore, it is most natural to assume in the peculiar circumstances of the case that though 50% damage was the actual damage or the total damage, there would be some other damage to the remaining contents of the bag.

6. Therefore considering the fact that in all 902 bags were despatched and considering the rate of 65 or even lesser rate, additional compensation of Rs.5,000/- would be proper in the circumstances. Therefore, I pass the following order:

ORDER

. First Appeal No. 755 of 1992 filed by the Union of India is partly allowed. Decree against South Eastern Railway is set aside. Similarly decretal amount will carry interest at the rate of 9% per annum.

. So far as cross objection is concerned, the respondents - applicants will be entitled to Rs.5,000/- more as additional compensation with interest at the rate of 6% per annum from the date of the order of the Tribunal.

. No order as to costs in Appeal as well as in the Cross objections.

. Mr. Samant states that Union of India has deposited the amount in this court. After payment to the respondents - applicants as per the above order, the excess amount be refunded to the Union of India.

1.04.2005 (D.G. DESHPANDE, J.)